

## **METROPOLITAN AREA PLANNING COMMISSION**

### **MINUTES**

**January 21, 2010**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, January 21, 2010, at 1:30 P.M., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: G. Nelson Van Fleet, Chair; Debra Miller Stevens, Vice Chair; Darrell Downing; Shawn Farney; David Foster; Bud Hentzen; Hoyt Hillman; Bill Johnson (out at 2:50 P.M.); Joe Johnson and Ronald Marnell. David Dennis; John W. McKay, Jr.; M.S. Mitchell and Don Sherman were absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Bill Longnecker, Senior Planner; Jess McNeely, Senior Planner; Neil Strahl, Senior Planner; Derrick Slocum, Associate Planner; Joe Lang, Chief Deputy City Attorney; Bob Parnacott, Assistant County Counselor and Maryann Crockett, Recording Secretary.

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1. Approval of the December 17, 2009 and January 7, 2010 MAPC meeting minutes:

Approval of the December 17, 2009 MAPC meeting minutes.

**MOTION:** To approve the December 17, 2009 minutes as amended.

**DOWNING** moved, **MILLER-STEVENS** seconded the motion, and it carried (10-0).

Approval of the January 7, 2010 MAPC meeting minutes.

**MOTION:** To approve the January 7, 2010 minutes as amended.

**HILLMAN** moved, **FARNEY** seconded the motion, and it carried (10-0).

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## **2. CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

- 2-1. **SUB2009-83: One-Step Final Plat -- HALEY VILLAGE ADDITION**, located north of 47th Street South and west of Hydraulic.

**NOTE:** This is an unplatted site located within the City.

### **STAFF COMMENTS:**

- A. City of Wichita Water Utilities Department advises that water and sewer are available to serve all the lots platted.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Stormwater Engineering has approved the applicant's drainage plan.
- D. A petition has been submitted for the paving of Victoria; however it will be constructed privately by the applicant.

- E. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- F. The year "2010" needs to be included within the signature blocks.
- G. The location of the subject property on the vicinity map needs corrected.
- H. The spelling of the word "together" in the legal description needs corrected.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send the information via e-mail to Cheryl Holloway (E-Mail address: [cholloway@wichita.gov](mailto:cholloway@wichita.gov)). Please include the name of the plat on the disc.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**HILLMAN** moved, **JOHNSON** seconded the motion, and it carried (10-0).

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**2-2. SUB2009-84: One-Step Final Plat -- THE GATEWAY CENTER 3RD ADDITION**, located on the southeast corner of 13th Street North and Greenwich Road.

**NOTE:** This is a replat of five lots and a reserve in the Gateway Center Addition. This site is also contained within the Gateway Center CUP (DP-239).

**STAFF COMMENTS:**

- A. City of Wichita Water Utilities Department requests a petition for the extension of water distribution main) and sewer lateral main) to serve Lots 4 and 5, and extension of water (distribution) to serve Lot 8 (which has access to sewer). All other lots have access to water and sewer.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Stormwater Engineering has approved the applicant's drainage plan.
- D. Traffic Engineering has approved the access controls. Two openings have been platted along 13<sup>th</sup> St. and three openings along Greenwich. Access controls have been platted in accordance with the previous plat and CUP, with the exception of relocation of the northernmost opening along Greenwich Road to the south.
- E. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- F. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- G. The perimeters of the proposed lots shall match the perimeters of the CUP parcel boundaries. The proposed access controls shall correspond with those imposed by the CUP. A CUP adjustment will need to be approved addressing these issues.
- H. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP and its special conditions for development on this property.
- I. The platting binder indicates a party holding a mortgage on the site. This party's name must be included as a signatory on the plat, or else documentation provided indicating that such mortgage has been released.
- J. In accordance with the CUP approval, a cross-lot circulation agreement is needed to assure internal vehicular movement between the lots.
- K. The platting text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.

- L. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- N. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- O. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- P. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Q. Perimeter closure computations shall be submitted with the final plat tracing.
- R. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send the information via e-mail to Cheryl Holloway (E-Mail address: [cholloway@wichita.gov](mailto:cholloway@wichita.gov)). Please include the name of the plat on the disc.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**HILLMAN** moved, **JOHNSON** seconded the motion, and it carried (10-0).

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**3. PUBLIC HEARING – VACATION ITEMS**

**3-1. VAC2009-43: City request to vacate an alley created by general warranty deed.**

**APPLICANTS/AGENT:** Netco Construction Co., Inc. (applicant) Ruggles & Bohm, PA, c/o  
Chris Bohm (agent)

**LEGAL DESCRIPTION:** Generally described as the south 20 feet of Lot 31, Block A, South University Place Addition, Wichita, Sedgwick County, Kansas, as described on the general warranty deed.

**LOCATION:** Generally located on the east side of Meridian Avenue, midway between Harry Street & Merton Avenue. (WCC #IV).

**REASON FOR REQUEST:** Consolidation of two abutting properties

**CURRENT ZONING:** The site is an alley. Abutting northern, southern and adjacent (across Meridian Avenue) western properties are zoned LC Limited Commercial ("LC"). Adjacent (across platted alley) eastern properties are zoned TF-3 Two-family Residential ("TF-3").

The applicant is requesting the vacation of the 20-foot wide alley right-of-way (ROW) created by a general warranty deed and approved by the "Commission" April 6, 1954; #926, pages 529 & 530. The deed describes the owner, "first party," of the south 20 feet of Lot 31, Block A, South University Place Addition, conveying it as an alley for "the public," which is identified as the "second party." The two abutting north and south properties list the same ownership address, the applicant. The subject alley connects the platted, north – south alley to Meridian Avenue. The platted north – south alley was recorded on the South University Place Addition with the Register of Deeds January 22, 1887. The alley connects to Harry Street (north) and Merton Avenue (south). The proposed vacation will not create any dead end public ROWs, nor will it deny access to public ROW to any abutting or adjacent properties. There are no utilities in the subject alley. The Meridian half street ROW varies from 40 to 50 feet in this area. The half street portion of Meridian along the site's frontage is 40 feet, with 50 feet of half street ROW across from it; retain the west 10 feet of the alley as street ROW.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from City Traffic, Public Works, Water & Sewer, Storm Water, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the described alley ROW with conditions:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
  1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time December 31, 2009, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the described alley created by a general warranty deed and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.

Conditions (but not limited to) associated with the request:

- (1) If necessary retain those portions of the vacated alley ROW as utility and drainage easements as determined by City Public Works/Storm Water and franchised utilities. Provide Planning staff with a legal description of the approved vacated alley ROW on a word document via e-mail. Provide any additional easement, as needed, by dedication by separate instrument, prior to this vacation case going to City Council for final action.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicants. Provide Planning staff with confirmation of this requirement being completed or that suitable guarantees have been provided.
- (3) Retain the west 10 feet of the alley as street ROW.
- (4) All improvements shall be according to City Standards and at the applicant's expense, including any

extension of curb along the Meridian Avenue intersections and drainage lines/gutters/outlets. Provide Public Works with all needed guarantees to ensure that those improvements will be made, prior to this vacation case going to City Council for final action.

- (5) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) If necessary retain those portions of the vacated alley ROW as utility and drainage easements as determined by City Public Works/Storm Water and franchised utilities. Provide Planning staff with a legal description of the approved vacated alley ROW on a word document via e-mail. Provide any additional easement, as needed, by dedication by separate instrument, prior to this vacation case going to City Council for final action.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicants. Provide Planning staff with conformation of this requirement being completed or that suitable guarantees have been provided.
- (3) Retain the west 10 feet of the alley as street ROW
- (4) All improvements shall be according to City Standards and at the applicant's expense, including any extension of curb along the Meridian Avenue intersections and drainage lines/gutters/outlets. Provide Public Works with all needed guarantees to ensure that those improvements will be made, prior to this vacation case going to City Council for final action.
- (5) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**HILLMAN** moved, **J. JOHNSON** seconded the motion, and it carried (10-0).

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**3-2. VAC2009-44: City request to vacate the platlor's text in reference to platted reserve to amend the uses allowed.**

**OWNERS/AGENT:**

City of Wichita, c/o John Philbrick (owner) Larksfield Place Retirement Communities, Inc., c/o Valerie McGhee (applicant) Baughman Co. PA, c/o Russ Ewy (agent)

**LEGAL DESCRIPTION:** Reserve B, Larksfield Place Addition, Wichita, Sedgwick County, Kansas

**LOCATION:** Generally located west of Rock Road, on the southeast corner of Gouverneur Street and 29<sup>th</sup> Street North (WCC II)

**REASON FOR REQUEST:** Allow signage in platted reserve

**CURRENT ZONING:** The site is zoned SF-5 Single-family Residential (“SF-5”) with overlay CUP DP-73. All abutting and adjacent properties are zoned SF-5 and GO General Office (“GO”).

The applicant is requesting that the uses allowed in the platted Reserve B, Larksfield Place Addition be vacated and amended. Currently the plat’s text states that Reserve B is to be used for “...the construction and maintenance of public utilities, drainage, landscaping, irrigation and recreation areas...platted also for a floodway.” The applicant requests the vacation to allow for signage, while retaining the platted reserve’s original uses. Per Geozone, there appears to be manholes, sewer and water lines/utilities in the platted reserve. Sewer and the manholes appear to be covered by easements, but water does not. The platted reserve is not located within any FEMA floodways or flood zones. There are no franchised utilities located within the described reserve. The site is located within CUP DP-73; all signage must conform to CUP DP-73’s standards and if needed any adjustment or amendment needed for additional signage in CUP DP-73 is required. The Larksfield Place Addition was recorded with the Register of Deeds July 14, 1986.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from City Public Works/Water & Sewer/Storm Water, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the plat’s text to amend the uses allowed in the described platted reserve with conditions:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time December 31, 2009, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the plat’s text to amend the uses allowed in a platted reserve and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.

Conditions (but not limited to) associated with the request:

- (1) Vacate the plat’s text, amending it by allowing signage in the platted Reserve B, Larksfield Place Addition, per approval by City Public Works, Water and Sewer, Storm Water, and franchised utility representatives. Retain the platted described reserve’s original uses; “...the construction and maintenance of public utilities, drainage, landscaping, irrigation and recreation areas...platted also for a floodway.”
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant and at the applicant’s expense. If needed provide the necessary guarantees for relocation or reconstruction of utilities.

- (3) Provide staff with any needed easements for relocated utilities or utilities located outside of easements, prior to the case going WCC for final action and subsequent recording of the easements with the Vacation Order, with the Sedgwick County Register of Deeds.
- (4) All improvements shall be according to City Standards and at the applicants' expense. If needed provide the necessary guarantees for improvements.
- (5) The site is located within CUP DP-73; all signage must conform to CUP DP-73's standards and if needed any adjustment or amendment needed for additional signage in CUP DP-73 is required.
- (6) The owner of the site is the City of Wichita and as such the application and Vacation Petition must be signed by the City of Wichita.
- (7) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate the platlor's text, amending it by allowing signage in the platted Reserve B, Larksfield Place Addition, per approval by City Public Works, Water and Sewer, Storm Water, and franchised utility representatives. Retain the platted described reserve's original uses; "...the construction and maintenance of public utilities, drainage, landscaping, irrigation and recreation areas...platted also for a floodway."
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant and at the applicant's expense. If needed provide the necessary guarantees for relocation or reconstruction of utilities.
- (3) Provide staff with any needed easements for relocated utilities or utilities located outside of easements, prior to the case going WCC for final action and subsequent recording of the easements with the Vacation Order, with the Sedgwick County Register of Deeds.
- (4) All improvements shall be according to City Standards and at the applicants' expense. If needed provide the necessary guarantees for improvements.
- (5) The site is located within CUP DP-73; all signage must conform to CUP DP-73's standards and if needed any adjustment or amendment needed for additional signage in CUP DP-73 is required.
- (6) The owner of the site is the City of Wichita and as such the application and Vacation Petition must be signed by the City of Wichita.
- (7) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.



**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**HILLMAN** moved, **J. JOHNSON** seconded the motion, and it carried (10-0).

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## **PUBLIC HEARINGS**

4. **Case No.: CON2009-41** - Bruce and Nancy Moreau (Owner/Applicant) Request County Conditional Use request to permit a Kennel, Boarding/Breeding/Training use on property zoned SF-20 Single-Family Residential on property described as:

Lot 5, Block 1, Hancock Acres Addition, Wichita, Sedgwick County, Kansas; generally located north and east of S. Hillside Street and E. 83rd Street South (8300 Hancock Dr.).

**BACKGROUND:** The applicant is requesting a Conditional Use to allow a boarding, breeding and training kennel for dogs on property located north and east of the intersection of S. Hillside St. and E. 83rd St. S. The property is a platted 0.75 acre tract, zoned SF-20 Single-family Residential ("SF-20"). Much of the area surrounding the application area to the north, south and west is also zoned SF-20 and are developed with single-family residences and the RR Rural Residential ("RR") zoned property to the east is utilized for farming operations and a farmhouse. The nearest residence lies about 130-feet west of the proposed kennel site, and another neighboring residence lies 200-feet to the southwest.

The intent of the operation is to breed Chihuahua dogs in a safe and clean environment. The applicant plans to sell these dogs to the general public; however, they will not be housing/boarding dogs for general public use. The application area is currently developed with a primary single-family residence. The applicant proposes to move in a 10'x20' portable kennel for up to 20 Chihuahua dogs. The portable kennel has a central area that contains fully enclosed pens. These interior pens have access to pens located at the ends of the structure that are not fully enclosed.

Supplementary Use Regulation (k) in Section III-D.6 of the Unified Zoning District ("UZC") refers to "Kennels, boarding/breeding/training and hobby." Regulation (k) states: "When allowed as a permitted or Conditional Use, boarding/breeding/training kennels and hobby kennels shall be subject to the following standards:

- (1) Minimum lot size. "... The minimum lot size for boarding/breeding/training kennels shall be five acres, unless all animals are harbored indoors with no discernible noise or odor at the property lines.
- (2) Setbacks. "Outside runs, holding pens or other open-air type enclosures and shelters shall be located behind the front setback line and located at least 200 feet from any dwelling other than the owner's and at least 50-feet from adjoining property lines.
- (3) Screening. "Screening shall be provided except for those facilities located 600 feet or more from contiguous property lines. Screening shall be provided by structure, solid or semi-solid fencing, landscape materials, earth berms or natural site features maintained for the purpose of concealing the view of the animals behind such fence, landscape material, berm or natural feature from activities on contiguous properties. If fencing is used, it shall not be less than four nor more than eight feet in height. If Fences over six feet in height, landscape materials or earth berms are used, a plan shall be submitted for approval to the Planning Director and Zoning Administrator. Fences used for screening may have no more than five percent open surface. Landscape materials must provide the desired screening effect within the first growing season following installation and throughout the year every year thereafter."

Currently, as shown on the submitted site plan, the kennel structure is located approximately 20-feet from the north property line and approximately 130-feet east of the nearest residence. Also the site is less than the minimum lot area of five acres. Because these three circumstances, the two setbacks and the minimum lot size, do not meet minimum standards, the case would have to be heard by the Board of County Commissioners, because only the governing body has the authority to waive the standards of the minimum lot size and setbacks.

The site is located in the “Zoning Area of Influence” (“ZAOI”) for Derby. The Derby Planning Commission heard this request on January 7, 2010. A number of surrounding property owners spoke in opposition to the request. The Derby Planning Commission voted to deny the request, with all members voting for the denial.

**CASE HISTORY:** The subject site is described as Lot 5, Block 1, Hancock Acres Addition to Derby, recorded on December 3, 1971. According to county records, the house currently on the site was constructed in 1975.

**ADJACENT ZONING AND LAND USE:**

|        |       |                           |
|--------|-------|---------------------------|
| NORTH: | SF-20 | Residential               |
| EAST:  | RR    | Residence and Agriculture |
| SOUTH: | SF-20 | Residential               |
| WEST:  | SF-20 | Residential               |

**PUBLIC SERVICES:** East 83<sup>rd</sup> Street South is classified as paved 2-lane minor arterial while South Hancock Drive would be classified as a paved 2-lane residential street. The nearest intersection is to the south, at 83<sup>rd</sup> Street South and South Hancock Drive, however, there are no traffic counts at this intersection or on either of these roads near this location. The *2030 Transportation Plan* does designate that sometime before 2030 improvements will be made to 83<sup>rd</sup> Street S., widening the road to four lanes between S. Hillside and Derby’s city limit. There is no sewer to this site; so the site would be currently served by a septic system or alternative treatment system. The site is not located in a Rural Water District, well water serves the site.

**CONFORMANCE TO PLANS/POLICIES:** The Comprehensive Plan identifies this property as being inside the Derby Small City 2030 Urban Growth Area. This designates small cities’ urban growth areas that are generally located adjacent to their existing municipal boundaries, and indicates the reasonable direction and magnitude of growth these communities can expect to experience out to the year 2030. Determination of growth direction and amount is based upon municipal political considerations, anticipated municipal population growth, efficient patterns of municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors.

**RECOMMENDATION:** Dog kennels of a ‘reasonable size’ are appropriate for rural areas of the County and, with certain restrictions, can be compatible with nearby residences and agricultural operations. Based on the information available prior to the public hearing, staff recommends the application be APPROVED subject to the following conditions:

- (1) The Conditional Use shall comply with section III.D.6.k of the Wichita-Sedgwick County Unified Zoning Code, and applicable federal, state, and local requirements.
- (2) The property shall be developed and maintained in accordance with a revised site plan, which includes measurements, approved by the Planning Director, showing any lighting, landscaping, setbacks, easements and all buildings in conformance with the UZC.
- (3) The kennel operator shall have on file proof of rabies vaccinations by a licensed veterinarian and proof of identification and ownership for all dogs five months and older.

- (4) Cleaning of the boarding kennel facility shall be performed as often as necessary to maintain sanitary conditions, and a “suitable method” of eliminating excess water from animal housing facilities shall be provided as determined by the Sedgwick County Department of Environmental Resources. Interior surface materials shall be constructed of non-porous materials that are impervious to moisture.
- (5) Sufficient quantities of food and water shall be provided to keep the dogs in good physical condition. The animals shall be fed at least once daily and provided clean water at all times. Food and water containers shall be located to minimize contamination and shall be cleaned as often as necessary to maintain sanitary conditions.
- (6) All waste materials shall be disposed of in such a manner as to minimize odors and disease hazards. The boarding kennel shall be maintained in a sanitary manner as required by applicable codes (e.g. Chapter 14, Article 5 of the Sedgwick County Code).
- (7) The animals confined in the boarding kennel shall be maintained in good physical condition, free of infectious diseases and parasites.
- (8) The number of adult dogs to be boarded shall not exceed 20 at any one time.
- (9) The applicant shall obtain all applicable permits including, but not limited to building, health and zoning.
- (10) The boarding facility shall be open to the unannounced inspection by Sedgwick County of Code Enforcement personnel during reasonable daylight hours to insure continued compliance with the above requirements.
- (11) If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the surrounding area: The area surrounding the application area to the north, south and west is zoned SF-20 and are developed with single-family residences and RR Rural Residential (“RR”) zoned property to the east is utilized for farming operations and a farmhouse.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned SF-20, which primarily permits large lot residential uses. The site could continue to be used as a residence without the Conditional Use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Potential noise, odors, and traffic generated by the requested Conditional Use could negatively affect nearby residents. The submitted site plan shows the kennel structure being located approximately 20-feet from the north property line and approximately 130-feet east of the nearest residence. If the applicant plans to have opened outside dog runs or other open-air type enclosures, then the case would have to be heard by the Board of County Commissioners, because only the governing body has the authority to wave the standards of the minimum lot size and setbacks. However, if the applicant keeps all the structures and runs enclosed and no odor or discernible noise can be detected at the property line, then the use can be utilized as shown on the site plan without the need of a waiver from the County Commission. The listed conditions should work to minimize any possible negative effects and allow the use to expire if development and maintenance of the

Conditional Use are violated.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Comprehensive Plan identifies this property as being inside the Derby Small City 2030 Urban Growth Area. This designates small cities' urban growth areas that are generally located adjacent to their existing municipal boundaries, and indicates the reasonable direction and magnitude of growth these communities can expect to experience out to the year 2030. Determination of growth direction and amount is based upon municipal political considerations, anticipated municipal population growth, efficient patterns of municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors. Currently, the *Wichita-Sedgwick County Unified Zoning Code* (UZC) lists "Kennel, Boarding/Breeding/Training" as a Conditional Use in the SF-20 district, subject to supplemental use regulations (k). The UZC definition of "Kennel, Boarding/Breeding/Training" is "premises housing five or more adult dogs, three or more of which are owned by someone other than the property resident, and premises housing over ten adult dogs." The UZC supplementary use regulations k conditions for this Conditional Use are attached to this report, they include a required separation of at least 200 feet from any outdoor kennel facilities to any neighboring residences, and required screening of kennel facilities located within 600 feet of any adjoining property line.
5. Impact of the proposed development on community facilities: The requested Conditional Use does entail breeding and selling of the dogs to the general public, however, the kennel is not open to the general public to board dogs and the amount of traffic to the operation would be no different than traffic to and from the house, therefore, approval should not impact community facilities to any significant degree.

**DALE MILLER**, Planning Staff presented the Staff Report.

**CHAIRMAN VAN FLEET** reported that the applicant had requested that he be given two minutes for his presentation and ten minutes for rebuttal.

**MOTION:** To give the applicant two minutes for his presentation and ten minutes for rebuttal.

**VAN FLEET** moved, **HILLMAN** seconded the motion, and it carried (9-1).  
**MARNELL** – No.

**BRUCE MOREAU, APPLICANT** commented that he lived in the county, outside the city limits. He said this business will not be open to the general public and that they will not be boarding animals. He said the puppies will be raised in their home by their bedside. He said they are only asking for a few small bred dogs, Chihuahuas and poodles. He said pound for pound, it will be much less than the fairly large dogs surrounding them in the area. He said the dogs will be harbored indoors in the kennel building and will live in a clean, healthy, and safe environment. He said the building and property have been inspected by the State and passed inspection. He said they will comply with the revised site plan and all sections of the proposal will meet code and have all licenses required. He said State requirements are very rigid and that they have a care plan for each animal provided by a licensed veterinarian. He said their yard backs up to rural residential zoning and that they were not made aware of the five acreage requirement or they would not have applied for a conditional use permit. He said they would like to limit the number of dogs to twenty at the most. He said there are horses, cows, and chickens out there in the area and that Chihuahuas are not going to make any difference.

**JUDY EMMONS, 8324 PEACH LANE** said she lives directly across the street from this individual and that she is strictly opposed to the proposal. She said they enjoy living out in country love having their pets but they don't want 20 pets across the street from them. She said they are concerned about the smell

even if the kennel is enclosed or not it will eventually smell. She said they are also concerned about the ground water since they are all on well water out there. She said there is drainage under the dog kennel and asked where is it draining to? She also asked about disposal of the pets waste products. She referenced an article about small dog's and how they became popular after a movie but added that the Sedgwick County Shelter currently has 13 Chihuahuas up for adoption. She said Chihuahua's area very temperamental and that if they are not socialized correctly they don't get along with other dogs and children. She said there was one stray in neighborhood already this year and that sometimes animals just get dropped in the area. She said another issue is that they can hear the dogs because Chihuahuas make a lot of noise. She said it is also upsetting to know that they are going through this process when the kennel is already in existence and has been. She said this individual has not abided by rules and regulations to begin with. She concluded by saying that she was opposed to this.

**HILLMAN** asked if the neighborhood was on a septic system or standard sewer system.

**EMMONS** said they are on septic systems.

**NANCY SMITH** said she has lived in the Hancock area for thirty years. She said there are horses, cattle, peacocks and chickens near because the area surrounding the subdivision is a farm environment. She said she has a big dog and when the dog barks, she brings it in and that the dog is not left out in the evening and at night. She said most of her neighbors have big dogs. She said one of objections she has is that she is a light sleeper; that she works at a hospital and has to go to bed early. She said the barking in the neighborhood does keep her awake and she objects to that. She said some neighbors have the best intentions but that the truth of the matter is that laws have been neglected. She said this use in not in compliance with code or with the neighborhood regulations. She concluded by respectfully asking that this be denied.

**HILLMAN** said it was his experience that peacocks can be loud and aggressive.

**SMITH** said there were one or two peacocks in the area and that she occasionally hears them.

**AL WILLIAMS, 4019 ALBERTA, HANCOCK ACRES** said he believes that Mr. Slocum was misled on what he was told in the application. He said at the Derby Planning Commission hearing Mr. Slocum was not aware that the kennel was already there and in full use and that there was the restriction of five acres versus  $\frac{3}{4}$  of an acre. He said the kennel was put in place (hauled in at night by an 18-wheeler) before this procedure was started and before the initial hearing at Derby. He said had the neighbors not been notified of that hearing, the kennel could very well have been sneaked in and into operation and no one except the neighbors on either side of the applicant would know about it. He said his whole thought to the Commission was if you would not want a kennel in your neighborhood; please don't put one in his.

**JUDY FASIG, 8252 PITTMAN DRIVE** asked what this proposal was going to do to property values and the devaluation of property values in the area. She asked if she was to try to sell her house in spring or summer and potential buyers could hear the noise, smell the smell, and see the site. She requested that the Commission don't do this proposal. She said County ordinance says not more than five dogs on a property which she thinks five dogs is too much. She said but twenty dogs on .75 acre is not right and it is also not fair to the dogs.

**DAVID GEORGE, 3701 CLEVELAND DRIVE** said he has lived in Hancock Acres for twenty-seven years. He said the neighbors live together very well and most of them for a lot of years. He said this was a single-family residential development, not commercial. He said it is a neighborhood where kids are safe to ride their bicycles but that is becoming more and more difficult. He said one residence has had up to thirteen vehicles parked in front of it. He said the applicant's home has had up to three motor homes parked outside at one time. He said people trying to run businesses out of their homes have caused increased traffic and commercial traffic in the area. He said people are continually trying to start up commercial businesses in the area. He also mentioned that he almost hit the trailer brought in by the semi

that delivered the kennel building. He said they are mainly trying to hang on to a residential neighborhood. He said if the Commission allows one person to have 20 dogs then everyone can have 20 dogs. He said he is also concerned about the groundwater because the water table is only 20 feet down. He said neighbors have complained about businesses in the area in the past and the County has come out and put a stop to it. He said they would like to continue with even more severe restrictions. He said the 5-acres rule has been in place for years and requested that the Commission not make any exceptions to the rules because they aren't tough enough in his opinion. He asked that the Commission leave the area rural residential.

**HILLMAN** asked Mr. George if his neighbors have businesses in this area, how many and what kinds of businesses.

**GEORGE** said normally the businesses don't last long because someone complains; the County comes out and tells them that they can't do that and they close or move the business.

**HILLMAN** asked does Hancock Acres have covenants that restrict that type of operation.

**GEORGE** said the County has rules that say you can't have businesses in residential zoning, but that it is hard to control that. He said basically, they just want a neighborhood that is a safe place for kids.

**LARRY MCCANLESS, 4011 ALBERTA DRIVE** said he has lived in the area for seventeen years. He said if the Ordinance states five acres, he can understand four acres, three and one half acres or maybe even two acres, but making an exception for .75 acres which is approximately 1/8 of what the regulations require seemed a little extreme to him. He said he didn't care about size of the dogs and was unaware that the kennel was already there but mentioned that about 5-6 months ago there seemed to be constant, excessive barking and not just Chihuahuas. He said if the Commission wouldn't want this in their neighborhood; please don't put it in theirs. He concluded by reiterating that the Derby Planning Commission unanimously rejected the proposal and asked the Planning Commission to reject it as well.

**CHRISTY GIMBEN, 8244 PITMAN DRIVE** said she has six children ranging in ages from 14-2 years of age. She asked if the property owners get an approval for a kennel for Chihuahuas what happens later if they want bigger dogs. She said she doesn't see where they are limited to small breeds. She said she is concerned about the safety of neighborhood children and the people walking around the neighborhood in the evening.

**JOANNA RAWLINS, 3700 EAST HAVEN** clarified that there were no horses in the neighborhood but that several farms were located just near the neighborhood. She said you hear dogs in any area as well as outside of the city. She said she was more concerned about a business bringing people, strangers into the neighborhood where children play outside. She said the neighbors don't want this kind of thing in the neighborhood.

**DIANA GEORGE, 3701 HAVEN DRIVE** said she talked her son into buying a house in the area at 3909 Haven Drive. She said he was excited about living the neighborhood that he had been raised in. She said they are concerned that the property value will go down if this is not kept as a residential area. She said in these economic times why take a stance that would devalue properties. She said the Commissioners wouldn't do that to anyone in their neighborhood. She said the economy is horribly bad right now so why chance it. She said if they have twenty adult dogs, how many puppies will they have? She asked do the puppies count or just the adults? She said currently there is not a lot of traffic in the area. She said people will be picking up the dogs which mean they will have strangers in the neighborhood. She concluded by saying that the neighborhood is very safe for children; that most of the neighbors know each other; and they don't want property values to go down.

**BILL EMMONS, 8324 PEACH LANE** said he has lived in the area fifteen years and that he doesn't want a kennel there. He mentioned that quite a few folks were at today's meeting but that it was only a

portion of the size of the group that was at the Derby Planning Commission because they couldn't get off of work. He said they are all willing to sign a petition if they need to go that route. He said this proposal is like asking forgiveness instead of getting permission. The kennel is in place, there is water, electric, etc. and was running until the applicant got caught and now he is asking for a permit. He asked if this type of behavior was indicative of how the applicant would run his business. He also asked if the zoning is changed and the applicant sells out and moves, what other type of business could go in there, a machine shop, or would they have to go through this same process of another conditional use permit.

**JIM MCKINNEY, 3801 ALBERTA DRIVE** said he has lived in the area since 1980 and still likes it. He said the answer to this request seems such an obvious one. He quickly highlighted the points saying that there are more than 100 single family residences in the area. He said if they let the applicant do this then according to law they must make an exception for other 99 people who live in the area. He said that alone is enough reasons not to let this gentlemen do what he wants to do. In addition he said this has to do with quality of life, parking, water and contamination of water supply, sound, smell, and property values.

**CLIFF ALLEN, 3809 ALBERTA DRIVE** said he can't add to what everyone else has said. He mentioned that one of the dogs got out a few months ago. He said 83<sup>rd</sup> Street is the main road out of Derby and is used by emergency vehicles and with the sirens and lights every dog in the neighborhood started to bark. He said he didn't know how you would get twenty dogs calmed down.

**KATHIE ALLEN, 3809 ALBERTA DRIVE** said in reference to the peacocks, horses, and cows, she doesn't remember hearing any of them except the peacocks which are kind of like watch dogs but she can't even remember the last time she heard the peacocks. She said her daughter adopted a Chihuahua and occasionally brings it to her house and that if the dog hears any sound it starts barking and causes a chain reaction then their dogs start barking. She said dogs are like children and that they have to get outside and run so they have to be let out in the yard because they can't live a healthy life in a building. She said she hopes the Commission doesn't make a big mistake and open too many doors because she said some people are responsible but some are not.

**HILLMAN** asked the County Attorney what were the rules and regulations for home businesses in the County.

**PARNACOTT, ASSISTANT COUNTY COUNSELOR** said there is a whole set of regulations for rural home based occupations. He said the Unified Zoning Code allows certain types of businesses in rural residential.

**MOREAU** said he would like to answer some questions concerning the smell, odor, and ground water. He said as far as urine in the building, they mop it out every day and any solid waste is picked up, bagged and put in the trash. He said no solid waste is going into the groundwater. He said there is no smell and that the building is air conditioned and heated, insulated stainless steel and noise suppressed. He reviewed several pictures of the surrounding neighborhood including the view from his backyard that included several horses which he felt should be a concern as far as the water contamination issue that was mentioned. The pictures also included signs for several home based businesses including Avon and kennels. He said perception was everything and concluded by reiterating the following points: that the kennel will not affect the neighborhood water system; that they plan to dispose of waste properly; that the business will not create traffic issues; that they will have a limited number of puppies to sell; that the kennel will not create excessive/unacceptable noise; that there will be a limited number of small breed dogs; that the kennel will not create excessive odors; that solid waste will be bagged and they will use disinfectants to clean; and that the kennel will not generate vicious dog problems. He said they have already passed rigid state kennel licensing requirements; that they have retained a licensed veterinarian, with an approved care plan for each dog; and that they will comply with all city, and county revised site plan, codes, and requirements imposed.

**FOSTER** referenced the site plan and asked Mr. Moreau to explain the outside pen set up and what appeared to be an additional dog pen northeast on the site.

**MOREAU** explained that even the “outside” run areas, which were required, are enclosed in the building. He commented that the other pen was there when they moved into the house.

**FOSTER** asked if Mr. Moreau would consider the other pen location as a potential site location of the kennel.

**MOREAU** said it could go back in that area once the zoning issues were processed and it was decided where the kennel needs to be located and where it needs to face.

**MILLER STEVENS** commented that the applicant made a statement that they would comply with the regulations and the code; however, she asked can they physically comply with the 5-acre requirement and the number of square footage required from the nearest neighbor.

**MOREAU** responded they do not have 5 acres and that is why they applied for the conditional use.

**CHAIRMAN VAN FLEET** asked if all twenty dogs would be breeding stock.

**MOREAU** replied no, approximately 8 –5 dogs would be for breeding.

**CHAIRMAN VAN FLEET** asked what was the normal liter size.

**MOREAU** said 2-6 puppies.

**CHAIRMAN VAN FLEET** asked how many liters per year.

**MOREAU** said up to seven liters a year

**CHAIRMAN VAN FLEET** commented so there could potentially more than 30 dogs at the kennel at any given.

**MOREAU** said not at one time. He said timing of when the liters would be born is critical because the dogs need a resting period between liters. He said you cannot have two dogs breeding at the same time. He said they keep extensive records, which the State reviews.

**CHAIRMAN VAN FLEET** asked if the toy poodles were AKC (American Kennel Club) registered and how many there were.

**MOREAU** said some of them are AKC registered and that currently they have two toy poodles.

**FOSTER** asked for a clarification of the definition of “Hobby Kennel” and asked the applicant what they had been told that makes them believe this is a hobby kennel.

**MOREAU** said the puppies are raised in their home and that the kennel is for adult dogs, not for whelping or weaning dogs, just to house adult dogs.

**FOSTER** asked how many dogs the kennel could hold.

**MOREAU** said 25 or more small breed dogs.

**FOSTER** asked if they were limited to ten dogs instead of twenty; how that would affect the kennel operation.



**MOREAU** he said would not be opposed to a limitation of ten small breed dogs; however, twelve would be more than sufficient. He said this type of kennel can hold approximately 25 or more small breed dogs.

**HENTZEN** asked if a “home occupation permit” was required to operate this type of business.

**PARNACOTT** said not with a conditional use permit because the conditional use permit would give the applicant the right to do what they are proposing. He said there is a list of occupations that are permitted with a “home based occupation permit.” He said depending on the size of your property and the nature of the operation, you may or may not need a conditional use to go along with that.

**DIRECTOR SCHLEGEL** commented that he thought he heard the applicant say they would be willing to move the kennel in order to meet setback requirements.

**MOREAU** said if the conditional use says they have to have the kennel in a certain location in the backyard.

**J. JOHNSON** asked if the number of dogs was limited to 10-12, would that include the puppies.

**MOREAU** said that would not include puppies because dogs under six months old are not adult and are not counted. He said they don’t want a bunch of puppies around; they are doing this to get rid of them.

**HILLMAN** asked if the County guidelines limit it to five dogs and then how does that work.

**MILLER** said the code indicates an individual can have four adult dogs without a conditional use permit. He said once a fifth dog is added, a conditional use permit as a hobby kennel is required. He said anyone with 5-10 adult dogs is considered a hobby kennel. Once an eleventh dog is added, the operation is considered a boarding, breeding and training kennel, according to the Unified Zoning Code (UZC).

**MILLER STEVENS** asked Mr. Moreau what licenses and permits they have.

**MOREAU** said they have applied and received a State Hobby Breeders License and an electrical permit and have been granted that.

**HILLMAN** asked Mr. Moreau about his relationship with a veterinarian.

**MOREAU** said they have a written care plan for each individual dog and paperwork and shots in order ready for inspection any time the State wishes to come out to the operation.

**MARNELL** said this case appears to raise some troubling issues. He said this particular operation of Mr. Moreau’s has not been a nuisance and doesn’t really create any problems but having said that, it does not, however, comply with the rules. He said this looks like a slippery slope type of case. He mentioned the size and number of dogs and commented that even a “hobby kennel” requires two acres. He said he believes the regulations were put there for a purpose and; therefore, was going to move to deny the request.

**MOTION:** To deny the requested zone change.

**MARNELL** moved, **DOWNING** seconded the motion, and it carried (9-1).

**FOSTER** – No.

**FOSTER** said he was curious when the two-acre and five-acre requirements were put into effect relative to the structure.

**MILLER** said he guessed the mid 1990’s.

**FOSTER** mentioned this particular structure because he said he was not familiar with this type of kennel at all. He said what he was getting at was this new type of kennel relative to the regulations and when they were developed.

**MILLER** said he didn't have any knowledge when they started to design this type of kennel.

**B. JOHNSON** asked if there was requirement to have this type of facility.

**MILLER** said the Supplemental Use Regulations address items such as screening and acceptable types of enclosures.

**B. JOHNSON** asked the reasons why staff supported this. He mentioned that it appeared that the kennel was located approximately 130 feet or  $\frac{3}{4}$  a block from the nearest neighbor.

**MILLER** said it was possible with the site plan to meet most of the regulations and that the requirements of the Supplemental Use Regulations can be waived by the governing body. He said staff advises applicant's of the standards and leaves it up to them as to whether they want to proceed with application.

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**B. JOHNSON** out at 2:50 p.m.

5. **Case No.: ZON2009-37** - Ian Dopps (Owner) / Savoy Company, P.A., Mark Savoy (Agent)  
Request County zone change from SF-20 Single-Family Residential to LC Limited Commercial on property described as:

That part of the West 10 acres of the North half of the Northeast Quarter of Section 12, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, described as beginning at a point on the East line of said 10 acres, 80 feet South of the Northeast corner thereof; thence West parallel with the North line of said Northeast Quarter 275 feet; thence South, parallel with the East line of said 10 acres, 158 feet; thence East, parallel with the North line of said Northeast Quarter, 275 feet to the East line of said 10 acres; thence North, along the East line of said 10 acres, 158 feet to the place of beginning; generally located south of West 21st Street North and 1/2 mile west of North 119th Street West (12807 W. 21st Street N.).

**BACKGROUND:** The applicant was originally seeking LC Limited Commercial ("LC") zoning for an unplatted, undeveloped, SF-20 Single-family Residential ("SF-20") tract that is just less than one acre in size, and is located south of West 21<sup>st</sup> Street North, one-half mile west of North 119<sup>th</sup> Street West. However, after filing the application the request was amended to GO General Office ("GO") instead of LC. The applicant's agent indicated it was the applicant's intention to build an office building, which does not require LC zoning. The application area is part of a larger 29.15-acre tract owned by the applicant that has a residence with the balance of the property used for agricultural activities. The tract is proposed to have 275 feet of frontage along 21<sup>st</sup> Street and be 158 deep.

On average office uses generate 11 daily trips (ADT) per 1,000 square feet of floor area. The site is approximately 43,429 square feet. Developed at thirty percent, the site could have 13,028 square feet of floor area that could yield approximately 143 average daily trips to the site. The total square footage that may be built could be impacted by its proximity to the floodplain.

East the application area is a developed single-family residential subdivision, Teal Brook Estates, zoned SF-5 Single-family Residential ("SF-5"). The land to the south and west is owned by the applicant, is zoned SF-20, has a residence and is also used for agricultural activities. Land to the north, across 21<sup>st</sup> Street, is zoned SF-20 or SF-5 Single-family Residential ("SF-5"), and is either vacant or developed with

a single-family subdivision, Cedar Downs Addition.

The GO district permits building heights up to 60 feet, plus one foot of additional height for each foot of setback beyond the minimum required; however, compatibility height standards limit structure height to 35 feet when located within 50 feet of the lot line of property zoned TF-3 Two-family Residential (“TF-3”) or more restrictive, that includes land zoned SF-5 and SF-20. Compatibility building height standards also allow height to increase by one foot for each additional three feet of setback beyond 50 feet. The GO district permits a zero or five feet interior side yard setback; however the compatibility setback standard will trigger a 25-foot setback adjacent to the site’s side and rear property lines. Zoning screening with fencing, screening wall, solid vegetation or landscaped earth berm will be required along the site’s rear and side lot lines where non-residential uses are contiguous to residential zoning. Selected land uses permitted by-right in the GO district include: all residential uses, church, hospital, medical services, general offices, hotel or motel subject to specified development standards, nursing facility or funeral home.

**CASE HISTORY:** None

**ADJACENT ZONING AND LAND USE:**

|        |       |   |
|--------|-------|---|
| NORTH: | SF-20 | Single-family Residential; 21 <sup>st</sup> Street, vacant  |
| SOUTH: | SF-20 | Single-family Residential; part of a larger tract containing a residence and also used for agricultural purposes (owned by the applicant) |
| EAST:  | SF-5  | Single-family Residential; single-family residences   |
| WEST:  | SF-20 | Single-family Residential; part of a large tract containing a residence and also used for agricultural purposes (owned by the applicant)  |

**PUBLIC SERVICES:** 21<sup>st</sup> Street is a paved two-lane arterial at this location, and has 80 feet of half-street right-of-way. At a national average, office uses generate 11 average daily trips per 1,000 square feet. Development at 30 percent of gross land area is 13,068 square feet equals a projected average daily traffic volume of 143 vehicles. Sewer and water lines are located along the southern side of 21<sup>st</sup> Street. Wichita’s city limits run along the application area’s eastern boundary. The application area is located inside the Cowskin Creek AE flood zone, which is a special flood hazard area subject to the 100-year flood as determined by a Flood Insurance Study. Concern over development and its impact on Cowskin Creek storm water control along this segment of 21<sup>st</sup> Street has been an issue in earlier zone change applications, ZON2006-32 (Neighborhood Office on 2.2-acres located on the north side of 21<sup>st</sup> Street, one-quarter mile east of 135<sup>th</sup> Street) Matthews Offices Addition and ZON2005-30 (General Office on 13.8 acres located on the south side of 21<sup>st</sup> Street, one-quarter-mile east of 135<sup>th</sup> Street) Eberly Farm Office Park Addition.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide map depicts this site as appropriate for “urban development mix” that characterizes land that is expected to be developed or redeveloped mostly with urban residential uses within the next 30 years, dated from May 2005. Urban development mix areas likely will have concentrations or pockets of institutional, local commercial or park and open space uses, as well. Applicable Commercial Location Guidelines found in the 1999 Update of *The Wichita-Sedgwick County Comprehensive Plan* and adopted by reference in 2005, state that: 1) Office uses should be generally located adjacent to arterial streets; 2) local, service-oriented offices should be incorporated within or adjacent to neighborhood and community scale, commercial development and 3) low-density office use can serve as a transitional land use between residential uses and higher intensity uses.

**RECOMMENDATION:** The neighborhood is part of a larger area located on both sides of this segment of 21<sup>st</sup> Street that has been slowly developing. Eberly Farms outdoor recreation use has been present for

decades, as well as some of the larger lot suburban residential developments located west of the application area (L.R. Jones 2<sup>nd</sup> Addition 1957; Forest View Addition 1958) and northeast of the site (the three Cedar Downs Additions 1974, '77 and '78). In more recent times Teal Brook Estates Addition, 1988, and Eberly Farm Office Park Addition, 2005, have been developed leaving the area in between these developments largely undeveloped. Storm water from Cowskin Creek has significantly affected the development pattern in this area. Ownership patterns and the Cowskin Creek have effectively isolated the application area from being developed as part of a larger tract. If this request is approved, drainage consideration would be addressed at the time of platting. Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: East the application area is a developed single-family residential subdivision, Teal Brook Estates, zoned SF-5 Single-family Residential ("SF-5"). The land to the south and west is owned by the applicant, is zoned SF-20, has a residence and is also used for agricultural activities. Land to the north, across 21<sup>st</sup> Street, is zoned SF-20 or SF-5 Single-family Residential ("SF-5"), and is either vacant or developed with a single-family subdivision, Cedar Downs Addition. This is an area that was passed over partially due to ownership patterns and flood control issues but is now on in a transition from agricultural to more urban scale development.
2. The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned SF-20 that pretty much limits use of the property for agriculture or large lot residential uses. The Cowskin and ownership patterns have isolated the tract from the larger tract. The site could be developed with two large lot residences that comply with SF-20 minimum lot requirements.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Code required GO district development standards should mitigate anticipated impacts.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial would presumably cause the applicant an economic hardship. Approval would provide the public with additional office development opportunities in a developing area.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide map depicts this site as appropriate for "urban development mix" that characterizes land that is expected to be developed or redeveloped mostly with urban residential uses within the next 30 years, dated from May 2005. Urban development mix areas likely will have concentrations or pockets of institutional, local commercial or park and open space uses, as well. Applicable Office Location Guidelines state: 1) Office uses should be generally located adjacent to arterial streets; 2) local, service-oriented offices should be incorporated within or adjacent to neighborhood and community scale, commercial development and 3) low-density office use can serve as a transitional land use between residential uses and higher intensity uses.
6. Length of time the property has remained vacant: The property is currently vacant.
7. Impact of the proposed development on community facilities: Public services, drainage, traffic improvements and other infrastructure are available or can be extended and will be determined at platting.

**DALE MILLER**, Planning Staff presented the Staff Report.

**HILLMAN** said there was significant flood plain in the area and that he knew drainage issues would be addressed at platting but asked how much additional dirt is going to have to be brought in to get this area up and out of the flood plain.

**MILLER** replied that the area was already filled in and said that the agent could address that question.

**MARK SAVOY, AGENT FOR THE APPLICANT** commented that the applicant is requesting changing zoning on the property because they might build a small medical facility and GO General Office zoning satisfies that requirement. He said the area has been filled in and they have a Letter of Map Revision based on fill removing this property from the flood zone.

**DON RENSNER, 2123 TEALBROOK COURT, PRESIDENT OF THE TEAL BROOK HOMEOWNERS ASSOCIATION** said the homeowners association has interviewed several of the affected land owners and surveyed the rest of the association in general and have elected one person to present general concerns of the members. He requested two additional minutes to present a PowerPoint presentation.

**MOTION:** To grant another two minutes for the presentation.

**DOWNING** moved, **HILLMAN** seconded the motion, and it carried (9-0).

**RENSNER** said the Teal Brook Homeowners Association Board voted unanimously to request denial of the proposed rezoning. He provided a PowerPoint presentation with pictures of the location and surrounding area. He commented that there is not much of a buffer. He referred to the 2030 Functional Land Use Guide and said the requested zoning is out of scope. In addition, he said the land use guide has that area slated for future park land development. He mentioned a property for sale at 119<sup>th</sup> Street ¼ mile from this zoning request that the homeowners association felt would be more suitable for development and that was already zoned properly. He briefly reviewed numerous for sale signs along 21<sup>st</sup> Street and mentioned a medical building located at 21<sup>st</sup> and Maize Road. He commented that this area holds water and said they are concerned about development in the flood plain, how much water will be displaced, where it will get pushed to, and where it will end up. He also mentioned that this was an historical property and asked about commercial development on historical property. In addition, he said this was a wildlife corridor and they believed a protected wetlands area. He added that if the development was less than one acre in size, it would not fall under the House Rules for wetlands.

**HILLMAN** asked if the area is a protected wetland, how did someone recently add dirt to the area to raise the property to a higher level?

**RENSNER** said you can apply for a wetlands permit through the county, which they believe the applicant has done. He said they questioned whether the area was properly evaluated. He commented that the wetlands permit is not subject to public notification.

**HILLMAN** asked should the wetland permit require that the area be able to handle and accommodate the resource limitations that area already had and not just pile dirt on it and move water onto someone else's property

**PARNACOTT** said he did not have enough background in that area to answer that question, but that he could research the answer and get back to the Commission.

**RENSNER** commented that he was an environmental manager of a large manufacturer who manages over 65 properties in North America and is familiar with the provisions of the Clean Water Act section that addresses disturbing more than one acre of land. He said they were just curious as to whether it has been addressed or looked at.

**IAN DOPPS, 12807 W. 21<sup>ST</sup> STREET NORTH** said they have pulled all the necessary permits. He commented on previous flooding in the area and that improvements to the Cowskin have helped alleviate the situation downstream. He mentioned that was how Teal Brook Lake was formed. He said they were aware that the area was historical; that he lived in the area; and that he is a respectful person and will do what he can. He said this area was best for him economically and they kept the acreage of the site to just less than one acre, which was big enough to do what they want to do.

**MARNELL** said considering the amount of flood plain, was there any other uses of this area that would be viable.

**DOPPS** commented maybe as agricultural. He said he didn't think people needed to worry, the government wouldn't allow this if it was going to affect anyone else.

**DR MATHEW** said he rezoned an area down the street and put his medical office in.

**MOTION:** To approve subject to staff recommendation.

**MARNELL** moved, **HENTZEN** seconded the motion, and it carried (9-0).

- 
6. **Case No.: ZON2009-38 and CON2009-44** - Dennis Niedens (applicant) / Roger Frank (owner)  
Request City Zone change from SF-5 Single-Family Residential to TF-3 Two-Family Residential  
and City Conditional Use for Multi-Family on property zoned TF-3 Two-Family Residential on  
property described as:

Lot 37; Davis Gardens Addition, Wichita, Sedgwick County, Kansas, generally located north of  
Central Avenue, west of Sheridan Avenue, on the south side of Elm Street.

**BACKGROUND:** The applicant is requesting TF-3 Two-family Residential ("TF-3") zoning on the undeveloped, 0.47+/- acre zoned SF-5 Single-family Residential ("SF-5") subject site; Lot 37, Davis Gardens Addition. The applicant also proposes a Conditional Use for multi-family residential, three duplexes (six dwelling units) on the one lot. A single duplex is meant to be developed on one lot. The minimum lot size for a duplex is 6,000-square feet. The Unified Zoning Code (UZC, Art III, Sec III-B.6.c) permits a Conditional Use for Multi-family Residential development on a TF-3 zoned lot up to a density of 14.5 dwelling units per acre. The proposed three duplexes on the 0.47-acre site qualify as multi-family residential development that is within the UZC's maximum density of 14.5 dwelling units per acres. As proposed, the density will be approximately 13.6 dwelling units per acre if this lot was one-acre in size.

The site plan shows the proposed layout of the three duplexes on the triangular shaped lot. It shows each duplex having an attached two car garage serving both dwelling units. The UZC requires one off-street parking space per dwelling unit for a duplex and the garage qualifies for the required off street parking; Art IV, Sec IV-A.4 & A.7. The site plan shows additional off-street parking along the site's Elm Street (right-of-way, ROW) frontage, within the front setback. The UZC permits additional off-street parking for duplexes in residential zoning districts when the setback area of the lot is abutting a street having on-street parking limitations and there is no reasonable access to the interior side or rear setbacks, provided that the total surfaced area within the setback shall not exceed 750-square feet or 50% of the required setback, whichever is greater; Art IV, Sec IV-A.6-a (4). As presented on the site plan the proposed additional off-street parking does not meet this standard. The proposed duplexes will be approximately 800-square feet, have two bedrooms, one bath, 12-inch lap, Hardie-board type of siding, with gable roofs and the before mentioned attached two car garage; the proposed duplexes will look very similar to the duplexes abutting the east side of the site.

Development in the area is a mix of mostly single-family residences, some two-story apartments and scattered duplexes. Zoning in the area is mostly SF-5, with some B Multi-family Residential (“B”) and MF-29 Multi-family Residential (“MF-29”) zoning located along an active rail road track (RR tracks), and scattered TF-3 zoning. Properties north of the site, across Elm Street, are zoned SF-5 and are developed as single-family residences (built 1940s) or are not developed. B zoned apartments abut the north side of the vacant SF-5 zoned lot. Properties abutting the east side of the site are developed as three duplexes zoned TF-3 (ZON2005-09/CON2005-09) and as a group of two-story apartments zoned MF-29 (Z-2431). A portion of the MF-29 zoning abuts the south side of the site, with an active RR track and Zoo Boulevard abutting the rest of the south and west sides of the site. There is no access across the RR tracks and Zoo from the site and the immediate area, with both Elm Streets and Sheridan Avenue dead ending as cul-de-sacs at the RR tracks. The site has frontage on Elm, a sand and gravel, local residential street.

**CASE HISTORY:** The undeveloped site is Lot 37, Davis Gardens Addition, which was recorded with the Register of deeds May 28, 1930. The 1997 aerial of the site shows it to be undeveloped.

**ADJACENT ZONING AND LAND USE:**

|        |             |   |
|--------|-------------|---|
| NORTH: | SF-5, B     | Undeveloped, single-family residences, two-story apartments |
| SOUTH: | MF-29, ROW  | Two-story apartments, RR tracks, Zoo Boulevard              |
| EAST:  | TF-3, MF-29 | Duplexes, two-story apartments                              |
| WEST:  | ROW         | RR tracks, Zoo Boulevard                                    |

**PUBLIC SERVICES:** The site has frontage on Elm Street, a sand and gravel, local residential street, with 60-foot of ROW. Elm intersects with Sheridan Avenue, a paved, local residential street, located approximately 170 feet east of the site. Neither street has recorded traffic counts. The closest major intersection to the subject site is Zoo Boulevard and Central Avenue, located approximately 1,000 feet south of the subject site. There is no access across the RR tracks and Zoo from the site and the immediate area, with both Elm and Sheridan dead ending as cul-de-sacs at the RR tracks. All utilities are available to the site.

**CONFORMANCE TO PLANS/POLICIES:** The “2030 Wichita Functional Land Use Guide” of the Wichita-Sedgwick County Comprehensive Plan identifies the application area as “Urban Residential.” The Urban Residential category reflects the full diversity of residential development densities found in a large urban municipality. The range of housing types found includes single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may be found in this category. The UZC identifies the TF-3 zoning district as meant to accommodate moderate density single-family residential and duplex developments as well as very limited multi-family residential development. The UZC also identifies the TF-3 zoning district as being compatible with the Urban Residential category. The proposed duplex development conforms to both the 2030 Wichita Functional Land Use Guide’s Urban Residential category and the UZC’s intent for the TCF-3 zoning district.

The Comprehensive Plan’s “Residential Locational Guidelines” for medium and high density residential states that such uses should be: (1) Transitional land uses between commercial and low density uses and may also serve to buffer low-density residential uses from commercial uses. The proposed duplex development serves as a transition and buffer between the existing single-family residences and the traffic from the active RR tracks and Zoo Boulevard, an arterial street. (2) Allocated to be within walking distances of neighborhood commercial centers, parks, schools and public transportation routes while being in close proximity to concentrations of employment, major thoroughfares and utility trunk lines. The site is not located in an area which easily lends itself to walking to commercial centers, parks or

schools, however the proposed site/development is located approximately 1,000 feet (by vehicle) north of Zoo and Central Avenue, both arterials which can direct traffic from the site to employment or those areas sited. (3) Directly accessible to arterial or collector streets in order to avoid high traffic volumes in lower density residential neighborhoods. The site has no direct access to an arterial or a collector street. Traffic generated off of the site would use residential streets to get to either Zoo or Central. (4) Sited where they will not overload or create congestion in existing and planned facilities/utilities. Proximity to the RR tracks has possibly contributed to the concentration of multi-family residential development in this area where access to arterials or collector streets is through residential neighborhoods.

This request mostly conforms to the goals and objectives of the residential land use category of the Wichita-Sedgwick County Comprehensive Plan, which encourages residential redevelopment, infill and higher density residential development that maximizes the public investment in existing and planned facilities and services. The site's weakness is its lack of direct access to a collector or arterial street, which it shares with the immediate area's existing multi-family residential development.

**RECOMMENDATION:** The area is a mix of mostly single-family residences, some two story apartments and scattered duplexes. The proposed duplex development is not out of character with the area. The site's weakness is its lack of direct access to a collector or arterial street, which it shares with the immediate area's existing multi-family residential development. Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to the following conditions:

- A. APPROVE the zone change (ZON2009-38) to TF-3 Two-family Residential ("TF-3").
- B. APPROVE the Conditional Use Request (CON2009-44), subject to the following conditions:
  - 1. The site shall be limited to three duplexes and six total dwelling units.
  - 2. The site shall be developed in general conformance with an approved site plan.
  - 3. Development on the site shall conform to all applicable codes to include zoning, building, landscape, housing, and health codes.
  - 4. Provide a no protest petition for the paving of Elm Street, to be recorded with Public Works.
  - 5. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: Development in the area is a mix of mostly single-family residences, some two story apartments and scattered duplexes. Zoning in the area is mostly SF-5, with some B Multi-family Residential ("B") and MF-29 Multi-family Residential ("MF-29") zoning located along an active rail road track (RR tracks), and scattered TF-3 zoning. Properties north of the site, across Elm Street, are zoned SF-5 and are developed as single-family residences (built 1940s) or are not developed. Properties abutting the east side of the site are developed as three duplexes zoned TF-3 (ZON2005-09/CON2005-09) and a group of two-story apartments zoned MF-29 (Z-2431). A portion of the MF-29 zoning abuts the south side of the site, with an active RR track and Zoo Boulevard abutting the rest of the south and west sides of the site. There is no access across the RR tracks and Zoo from the site and the immediate area, with both Elm Streets and Sheridan Avenue dead ending as cul-de-sacs at the RR tracks.



2. The suitability of the subject property for the uses to which it has been restricted: The triangular shaped property could be developed as single-family residential (two single-family residential sites by a lot split) as currently zoned, although it's abutting the RR tracks and adjoining Zoo Boulevard (an arterial street) make it less attractive for single-family residential development.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed TF-3 zoning and its companion Conditional Use is not out of character with the areas existing B, MF-29, TF-3 and SF-5 zoning and the two story apartments, duplexes and single-family residences. In fact the abutting eastern property was approved for the same TF-3 zoning and a similar duplex development; ZON2005-09/CON2005-09.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: This request mostly conforms to the goals and objectives of the residential land use category of the Wichita-Sedgwick County Comprehensive Plan, which encourages residential redevelopment, infill and higher density residential development that maximizes the public investment in existing and planned facilities and services. The site's weakness is its lack of direct access to a collector or arterial street, which it shares with the immediate area's existing multi-family residential development; see "CONFORMANCE TO PLANS/POLICIES" portion of this report.
5. Impact of the proposed development on community facilities: An increase in traffic onto Elm Street, a sand and gravel residential street, and subsequently through the residential neighborhood is the biggest impact on community facilities. Agreeing to a no protest petition for the paving of Elm will lessen this impact.

**BILL LONGNECKER**, Planning Staff presented the Staff Report.

**FOSTER** referenced the site plan which showed off street parking abutting West Elm Street and asked if that was allowed.

**LONGNECKER** referenced paragraph 2, page 2 of the Staff Report, which noted that the parking off of Elm could not be located as shown on the site plan. He also said the parking area could probably be manipulated on the site plan to get the parking in conformance with the zoning code. He noted that the parking off of Elm was in excess of the required parking and was a courtesy parking. He added that the attached garages met the zoning code's required parking for duplexes. He referenced the DAB VI memo hand out wherein they requested that one additional on-site parking space per unit be approved, which was the applicant's intent.

**DENNIS NEIDENS, APPLICANT** said he has a contract with the property owner, Roger Frank, which is contingent upon this request being approved. He said he attended the DAB VI meeting and agreed to add one off street parking space for each unit, which was his intent as shown on the site plan. He also stated that he had enough room on the site to get the additional parking into compliance

**LARRY WOOD** said he lived across the road from the proposed development. He said it is a dead end street with a cul-de-sac which will need to be paved or they won't be able to have that many people in there. He said he doesn't want the street paved.

**HILLMAN** asked would it be considered a cul-de-sac by the Fire Department and if so, is it large enough for radial turns.

**LONGNECKER** replied that use made a cul-de-sac, as it was not platted. He noted that The Fire Department did not have a problem with Elm, as it was a short street. He said the Fire Department would prefer that all roads were paved and that the applicant had agreed to a no protest petition for the paving of Elm, at such time when it was scheduled to be paved. He also noted that there were no plans of CIPs for the paving of Elm, at this time.

**HILLMAN** asked about the location of the fire hydrants in the area.

**WOOD** said there are fire hydrants at Elm and Sheridan.

**LONGNECKER** confirmed the location of the fire hydrant on the corner of Elm and Sheridan, with a slide of the intersection.

**MOTION:** To approve subject to staff recommendation, including one additional off-street parking space per unit.

**FOSTER** moved, **DOWNING** seconded the motion, and it carried (9-0).

7. **Case No.: ZON2009-39** - Craig Smith (Owner/Applicant) Bill Fox, c/o Poe & Associates (Agent) Request City zone change from SF-5 Single-Family Residential to MF-18 Multi-Family Residential on property described as:

Lots 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46 and 47, Block 2, Terradyne West Addition to Wichita, Sedgwick County, Kansas, generally located west of 159th Street East and north of Sharon Lane, 1/3 mile north of Central Avenue.

**BACKGROUND:** The applicant requests a zone change from SF-5 Single-family Residential (“SF-5”) to MF-18 Multi-family Residential (“MF-18”) on two acres consisting of Lot 35, Block 2, through Lot 47, Block 2, and Lot 34, Block 2, except the South 42.79 feet thereof, all in Terradyne West an Addition to Wichita, Sedgwick County, Kansas. The subject site is located west of 159th Street East and north of Sharon Lane, 1/3 mile north of Central Avenue. The applicant proposes to develop the property with multi-family uses, possibly including duplexes, tri-plexes and four-plexes. The property has been zoned SF-5 since 2006 but has remained vacant. The applicant is of the opinion that rezoning the property would increase the marketability of the lots without harming the owners of the few lots that have already sold.

Property north of the site, across the Kansas Turnpike, is zoned SF-20 Single-family Residential (“SF-20”) and developed with single-family residences with farming and ranching. South of the site is property zoned SF-5 and is currently vacant, undeveloped land. Property to the west of the site is also zoned SF-5 and is developed with a golf course/country club use. Property to the east of the site, across North 159<sup>th</sup> St. East, is in Butler County and is developed as a golf course/country club.

**CASE HISTORY:** The site is Lots 35, Block 2, through Lot 47, Block 2, and Lot 34, Block 2, except the South 42.79 feet thereof; Terradyne West Addition, Wichita, Sedgwick County, Kansas, which was recorded with the Register of Deeds December 6, 2006. The site is located outside of the floodplain and was annexed into the City of Wichita in October of 2006.

**ADJACENT ZONING AND LAND USE:**

|        |               |                          |
|--------|---------------|--------------------------|
| NORTH: | SF-20         | Farming (Turnpike)       |
| SOUTH: | SF-5          | Single-family Residences |
| EAST:  | Butler County | Country Club/Residences  |
| WEST:  | SF-5          | Golf Course              |

**PUBLIC SERVICES:** 159<sup>th</sup> Street East is classified as a two-lane, paved minor arterial road with no traffic counts. The street that accesses the subject area from 159<sup>th</sup> Street East is North Prairie Dunes Street, which is a two-lane, paved residential road with no traffic counts. Municipal water and sewer does serve the subject area.

**CONFORMANCE TO PLANS/POLICIES:** The “2030 Wichita Functional Land Use Guide, as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as within the 2030 Wichita urban growth area and as appropriate for “urban development mix.” This category encompasses areas of land that will likely be developed or redeveloped within the next 30 years with uses predominately found in the Urban Residential Use category. Since the Land Use Guide was amended in 2005, this subject area has been annexed into the city.

The Comprehensive Plan objective for residential use for Wichita (**Objective III.B**) is to “encourage residential redevelopment, infill and higher density residential development, that maximizes the public investment in existing and planned facilities and services,” as well as **Strategy II.A.1** which recommends that “use Community Unit Plans, Planned Development Districts and zoning as tools to promote mixed use development, higher density residential environments and appropriate buffering.” **Strategy II.B.4** seeks to reduce Evaluate and implement an effective development plan review process to ensure that building placement and height, circulation, signage, screening and lighting for non-residential land uses do not adversely impact residential areas.

**Residential Locational Guideline #3** of the *Comprehensive Plan* recommends that medium-density residential uses may serve as a transitional land use between low and high density residential uses, and may also serve to buffer low-density residential uses from commercial uses. The proposed development complies with this guideline. **Residential Locational Guidelines #5** recommends that medium and high-density residential uses should be directly accessible to arterial or collector streets, in order to avoid high traffic volumes in lower density residential neighborhoods; and **#6** medium and high-density residential uses should be sited where they will not overload or create congestion in existing and planned facilities/utilities.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request for the MF-18 Multi-family Residential (“MF-18”) zoning be **APPROVED**.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Property north of the site, across the Kansas Turnpike, is zoned SF-20 Single-family Residential (“SF-20”) and developed with single-family residences with farming and ranching. South of the site is property zoned SF-5 and is currently vacant, undeveloped land. Property to the west of the site is also zoned SF-5 and is developed with a golf course/country club use. Property to the east of the site, across North 159<sup>th</sup> Street East, is in Butler County and is developed as a golf course/country club.
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned SF-5. The SF-5 zone district primarily restricts the site to residential uses. Because the site is near an interstate highway, it may not be desirable for single-family development.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request would double or triple the density at which the subject area could be developed, depending on duplex or multi-family development. The effect on nearby residents would be increased traffic on North Prairie Dunes Street. However, single-family residences generate more traffic per unit than multi-family residences. The minimum standards of the Unified Zoning Code should mitigate any other potential negative effects on the surrounding residential neighbors.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial presumably could cause the applicant a relative economic loss. Approval would introduce multi-family residential uses as infill development in a country club setting where such uses are increasing in popularity, especially high end condo

development.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The “2030 Wichita Functional Land Use Guide, as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as within the 2030 Wichita urban growth area and as appropriate for “urban development mix.” This category encompasses areas of land that will likely be developed or redeveloped within the next 30 years with uses predominately found in the Urban Residential Use category.
6. Length of time the property has remained vacant as currently zoned: The property was platted for single-family residences in 2006, and is currently undeveloped today.
7. Impact of the proposed development on community facilities: Approval of the request should not have a negative impact on community facilities; especially since all sewer and water lines are in place and roads have already been constructed.

**DALE MILLER**, Planning Staff presented the Staff Report.

**MOTION:** To approve subject to staff recommendation.

**B. JOHNSON** moved, **J. JOHNSON** seconded the motion, and it carried (10-0).

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**DONNA GOLTRY** commented that this item was deferred after it was advertised, but before the Public Hearing Notice was sent out. She said this has again been deferred to next month.

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8. Case No.: DER2009-13 (deferred from 1-7-10) - Request Unified Zoning Code amendment to event center and entertainment establishment and supplementary use requirements, residential fence height, and minor corrections.

General Location: City and County wide

**BACKGROUND:** At the MAPC meeting held January 10, 2010, the discussion expanded to consider the inclusion of landscape height restrictions to the proposed restrictions to residential fence height. The question was raised whether landscaping could be treated in the Unified Zoning Code (“UZC”) in a similar manner to avoid sight clearance safety issues caused by landscape plantings like those from fencing. The discussion questioned whether the Unified Zoning Code was the appropriate place for this to be regulated or whether it is or should be handled in the Landscape Ordinance or the Traffic Code.

The Landscape Code already addresses plant height restrictions for multi-family and nonresidential uses. It restricts the height to three feet for shrubbery, walls and fences more than 25 percent opaque when within a right triangle formed by the two legs of the triangle being 25 feet along the right-of-way and six feet along the driveway. However, the Landscape Code does not apply to single-family and duplex residential uses. An amendment to the Landscape Code to add jurisdiction over single-family and duplex uses would be a significant departure from the current scope of the Code.

The Traffic Code addresses sight distances and obstructions regarding intersections of public rights-of-way but does not at points where private driveways abut a right-of-way.

For these reasons, fence height limitation was proposed for inclusion in the UZC, specifically in Article III, Section III-E.2.e (1)(b), which itemizes all features and structures allowed within setbacks. A modification is included for this section to clarify that the restrictions apply at the intersection of driveways with street right-of-way only.

A similar amendment could be made to the previous subsection of the Code, Sec. III-E.2.e(1)(a), which currently allows trees, shrubbery or other features of natural growth as exceptions allowed within the setbacks. This seems the appropriate location for regulating plant heights in setbacks.

**CASE HISTORY:** MAPC held a public hearing on the residential fence height on January 7, 2010, and deferred the proposed amendments to consider whether to expand the amendment to include height restrictions on plant materials.

**CONFORMANCE TO PLANS/POLICIES:** The proposed limitation of plant heights is similar to the fence height amendment. These amendments support traffic safety and sight clearance objectives embodied in the Traffic Code. The language related to plant materials extends the scope of the Landscape Ordinance, which already limits plant heights for multi-family and nonresidential uses.

**RECOMMENDATION:** Based on these factors and the information available prior to the public hearing, it is recommended that the proposed additional amendments be recommended for adoption.

This recommendation is based upon the following findings:

1. Relative gain to the public health, safety and welfare as compared to the loss in value or hardship imposed upon the applicant: The reduced fence and plant heights in setbacks near the intersection of driveways with street right-of-way protect public safety with minimal changes to landscape and fencing practices.
2. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The proposed limitation of plant heights is similar to the fence height amendment. These amendments support traffic safety and sight clearance objectives embodied in the Traffic Code. The language related to plant materials extends the scope of the Landscape Ordinance, which already limits plant heights for multi-family and nonresidential uses.

Proposed Delineated Change:

Article III, Section III-E.1.e(1)(a) shall be amended as follows:

Trees, shrubbery or other features of natural growth; except that when shrubbery or other features of natural growth have more than 80 percent opacity, the maximum height along the side Lot Line shall not exceed three feet within 20 feet of its intersection with the street right-of-way line, and further that along any Lot Line within 20 feet of the intersection of the street right-of-way with an ingress/egress driveway, the maximum height shall not exceed three feet.

Article III, Section III-E.1.e(1)(b) shall be amended as follows:

Fences or Screening Walls that do not exceed eight feet in height as measured on the side of the Fence with the least vertical exposure above finished grade, except that for Fences or Screening Walls with more than 80 percent opacity, the maximum height along the side Lot Line shall not exceed three feet within 20 feet of its intersection with the street right-of-way line, and further that along any Lot Line within 20 feet of the intersection with an ingress/egress driveway, the maximum height shall not exceed three feet.

**DONNA GOLTRY**, Planning Staff presented the Staff Report. She referred to a hand out which was alternative language for fencing and landscaping that applied only within the City and in the County along urban standard roads (curbs and gutters).

**HENTZEN** mentioned that many farmers cultivate more or less ditch-to-ditch and don't want fences even though there may be a driveway to get into the field. He clarified that the alternative language would take care of this potential problem in the county.

**GOLTRY** said the alternative language would take care of that issue. She said it was a way to avoid the requirement in traditional rural areas. She said the language had been requested by people in the county because the requirement was burdensome and out of character with rural development.

**HILLMAN** asked about allowing exceptions for trees and commented that he lived in a heavily treed area and that when trees are grown to the curb, dense to the ground, they create significant blockages that do not allow visibility. He asked about making these requirements on landscaping retroactive to existing standards.

**GOLTRY** commented that the current requirement is that single trunk trees be limbed up to six 6 feet. She said tall evergreens would be treated as shrubbery, which is considered to be an encroachment. She said she believed the requirement was for it to be limited to 80 percent opacity.

**HILLMAN** asked about building fences in excess of 3 feet in the right-of-way.

**GOLTRY** said she believes fencing within the right-of-way is covered under minor street privilege rules. She deferred the question to Paul Gunzelman, City Traffic Engineer.

**HILLMAN** commented that in his neighborhood, people have built onto city property, and it creates problem with sight clearance. He said it may be difficult to go back and say we allowed that last year but not this year.

**GUNZELMAN** said minor street privilege addresses site obstructions constructed within right-of-way or within 90 feet of an uncontrolled intersection. He said when the City gets a complaint about an obstruction, they send letter to the homeowner requesting that the fence be removed or graduated down to 30 inches or constructed with wrought iron or chain link that you can see through.

**DOWNING** clarified that the when developing the revised wording concerning curb and gutter, country areas like 63<sup>rd</sup> Street from Hydraulic to the county line were taken into consideration.

**GOLTRY** commented that she spoke with Jim Weber, Deputy Director Sedgwick County Public Works, and his thinking was limiting this to urban standards with curb and gutter.

**FOSTER** said he reviewed the Landscape Ordinance solid screening requirements and mentioned that staff might want to go back and look at that for revisions as well.

**CHARLES PEASTER, 9453 N. 133<sup>RD</sup> STREET WEST** speaking for county interests said they have no problem with the current wording as revised.

**GOLTRY** mentioned that the Subdivision Regulations include definitions of road standards. There was brief discussion concerning the alternative language.

**HENTZEN** clarified that the County Commission makes the final decision on this recommendation.

**DIRECTOR SCHLEGEL** explained that both governing bodies (City and County) have the final authority on any changes to the Unified Zoning Code.

**HILLMAN** commented that this was a way to address some of the significant safety issues.

**JOE LANG, CHIEF DEPUTY CITY ATTORNEY** reminded Commission members that fencing and shrubbery was a side issue in the ordinance, that the main part was the entertainment issue discussed at the last meeting. He commented that eight votes were needed to approve the recommendation.

**STEVENS MILLER** clarified that no changes were made on the section on "teen" clubs.

**GOLTRY** responded "no."

**MOTION:** To approve changes to zoning code subject to staff recommendation and add in parentheses (curbs and gutters).

**MARNELL** moved, **DOWNING** seconded the motion, and it carried (9-0).

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**NON-PUBLIC HEARING ITEMS**

**9. Other Matters/Adjournment**

**MILLER STEVENS** reported that she had visited with the City Manager regarding the Planning Commission members receiving access cards into City Hall. She said he told her that his office is still struggling with other issues concerning giving the Commissioners access to the building. She said she reminded him of the length of time this has been discussed and requested that he expedite the issue as soon as possible. She said she also addressed these same concerns with Councilwoman Williams in addition to mentioning concerns regarding sanitizing and cleaning equipment and tubs used by security personnel. She concluded by saying that she has been assured that staff is making every effort to insure that Planning Commissioners get passes.

**CHAIRMAN VAN FLEET** also requested a badge for Mr. Parnacott.

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The Metropolitan Area Planning Department informally adjourned at 3:50 p.m.

State of Kansas                 )  
Sedgwick County             ) ss

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
John L. Schlegel, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)